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2

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/568,307	09/12/2006	Denis Pasquet	1107-060442	3388
28289	7590	10/09/2007		
THE WEBB LAW FIRM, P.C. 700 KOPPERS BUILDING 436 SEVENTH AVENUE PITTSBURGH, PA 15219			EXAMINER YANG, ANDREW	
			ART UNIT	PAPER NUMBER
			3733	
			MAIL DATE	DELIVERY MODE
			10/09/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/568,307

Applicant(s)

PASQUET ET AL.

Examiner

Andrew Yang

Art Unit

3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 September 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 February 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Specification

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

Oath/Declaration

It does not state that the person making the oath or declaration acknowledges the duty to disclose to the Office all information known to the person to be material to patentability as defined in 37 CFR 1.56.

Correct statement should read "I acknowledge the duty to disclose information which is material to patentability of this application in accordance with Title 37, Code of Federal Regulations Section 1.56."

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 15-30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 15, line 3, "the body" lacks a prior antecedent.

Art Unit: 3733

In claim 15, line 7, "the top portion" lacks a prior antecedent.

In claim 17, lines 2-3, "the midplane of said housing" lacks a prior antecedent.

Claim Rejections - 35 USC § 102

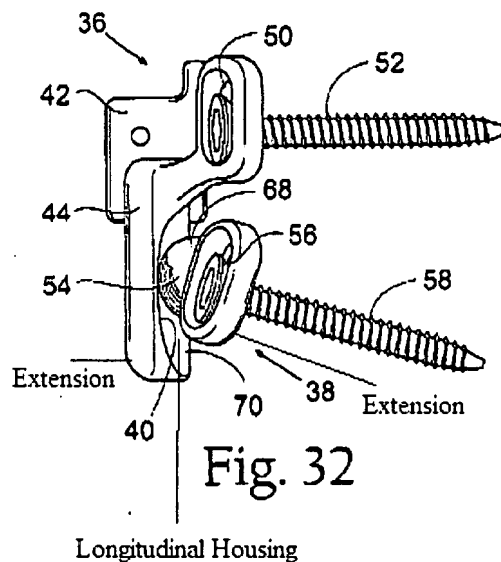
The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 15-17, 19, 24-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Reiley et al. (U.S. Publication No. 2003/0028250).

Reiley et al. discloses an intervertebral implant with a body. The body is made of an upper part 36 and a lower part 38. The upper part 36 has an upper surface with a groove 42 extending along a midplane of the implant. The lower part 38 has a longitudinal housing extending orthogonally to the groove 42 and formed on a bottom end face of lower part 38 as seen in the figure below.



Art Unit: 3733

The body of the spacer has first and second opposite side faces with an extension on each of the side faces defining a setback as seen in the figure above. Furthermore, the extension on the left side can also be considered a tab having a width narrower than the width of the implant. The tab faces the extension on the right such that the inside face and the tab cooperate to define the outline of the housing. A section of the housing is U-shaped and has a midplane not orthogonal to the midplane defined by the groove 44. The inside surface of the tab can be convex (Paragraph 124). A hole 56 in the extension is considered a notch facing the tab. The implant has first and second fastening means 52, 58. The implant can be implanted between the fifth lumbar vertebra and the sacral vertebra (Paragraph 20) where in a top portion will be in the longitudinal housing (Figure 38). It is noted that the illustrated figure does not show the sacral vertebrae, however, a top portion of the lower vertebrae in figure 38 is in the longitudinal housing.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

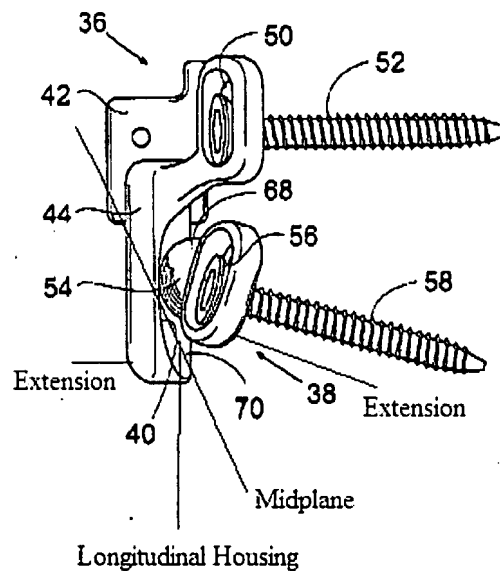
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 18, 20-23, 29, and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reiley et al. (U.S. Publication No. 2003/0028250).

Reiley et al. discloses the claimed invention and further discloses a midplane of the housing that is inclined relative to the bottom of the groove. The midplane is also

Art Unit: 3733

considered a zone. Furthermore, the extension shares the same midplane as the housing, there for it is also inclined relative to the plane formed by the bottom of the groove as seen in the figure below.



Reiley et al. fails to disclose the range of angles that the midplane is inclined. It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the device of Reiley et al. with the midplane inclined relative to the plane defined by the bottom of the groove with the claimed range of angles, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

Claims 27 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reiley et al. (2003/0028250) in view of Taylor (U.S. Patent No. 6626944).

Reiley et al. discloses the claimed invention except the fastening means is a strap and the implant has a hold formed in the body of the spacer for receiving the strap. Taylor teaches an interspinous implant that has a hold 7 for receiving a cord 8 that holds the implant to the vertebrae. It would have been obvious to one skilled in the art at the time the invention was made to construct the device of Reiley et al. with a fastening device in the form of a strap that is received in a hold on the body of the implant in view of Taylor. Using the known technique of using a strap to fasten an implant to the vertebrae as taught by Taylor would have been obvious to one skilled in the art.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew Yang whose telephone number is 571-272-3472. The examiner can normally be reached on 8:00am-5:30pm: Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic

Application/Control Number: 10/568,307

Page 7

Art Unit: 3733

Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A.Y.

9/30/2007


EDUARDO C. ROBERT
SUPERVISORY PATENT EXAMINER